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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the
Cable Television Consumer
Protection and Competition
Act of 1992

Cable Home Wiring

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MM Docket No. 92-260

**Comments of
TIMES MIRROR CABLE TELEVISION, INC.**

Introduction

Times Mirror Cable Television, Inc. ("TMCT") owns and operates approximately 36 cable television systems in thirteen states. It is headquartered in Irvine, California. TMCT hereby provides its comments to the FCC in connection with the FCC's pending proceeding on inside home wiring.

TMCT urges the FCC to fashion rules on home wiring that strike a fair balance that protects the significant investment by cable operators in internal home wiring within various types of premises. Cable operators have invested and continue to invest heavily in creating the infrastructure for their video delivery business. Nothing in the legislative history of Section 16(d) of the 1992 Cable Act^{1/} indicates that Congress intended to allow either a cable customer or a competing multichannel video provider to misappropriate a cable

^{1/} H.R. Rep. No. 628, 102d Cong., 2d Sess. (1991) ("House Report") at 118; Senate S. Rep. 92, 102d Cong., 1st Sess. (1991) ("Senate Report") at 23.

operator's property without adequate compensation or due regard for competitive considerations. Moreover, the legislative history of this section indicates Congressional sensitivity to significant problems faced by cable operators in disconnection of service, including theft of service and non-payment of subscriber bills.^{2/} This history also shows Congressional regard for concerns by operators about aeronautical signal leakage.^{3/} The FCC's proposed rules should give weight to these many legitimate considerations.

In particular, we believe that the FCC does not need to, nor should it, express any opinion on the ownership of cable home wiring either prior to or after the point at which a cable system terminates service. As the Commission recognizes in its Notice of Proposed Rulemaking, there are varied state court decisions regarding the ownership for tax purposes of internal cable home wiring while part of an operating cable system. Each of these cases turn on a number of factors, including whether the operator has, by contract or other means, evidenced ownership of the internal wiring. An FCC declaration on ownership could result in significant increased tax liability for years to come.

We urge the FCC to recognize its limited mandate: to "prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber." This is a very limited rulemaking that should not be pursued by the Commission more expansively than necessary to achieve the narrowly targeted purpose of this section of the Act.

^{2/} House Report at 118.

^{3/} Id. at 119.

1. The FCC's Rules Need To Consider The Differences In Wiring In Individual Residences And Wiring In Multiple Unit Dwellings

Most importantly, the FCC should clearly state that any right on the part of a cable consumer to acquire cable wiring applies only to internal wiring in individual residences. The legislative history of this provision clearly states that wiring of common areas within multiple unit dwellings was not meant to be covered by the 1992 Act.^{4/} A cable operator must allot significantly greater portion of time and materials to construction of MDU wiring. Moreover, the property owner who negotiates a bulk unit rate is the most likely potential competitor who may exercise the option of installing its own or a third party's SMATV system.

An MDU building owner may sign an agreement for cable service that calls upon a cable operator to construct wiring throughout a single multiple unit building, or several such buildings, and a short time later may try to terminate the contract and use that wiring for connection to a satellite master antenna on the roof of the building. The cable operator has in such a case expended not only significant investment in time and materials, but has also diverted its attention from building out other portions of its franchise area, with the expectation that it would reap multiyear returns from its MDU investment. If federal law guaranteed the property owner the right to acquire common area wiring, such abuses would be actually encouraged and approved by the FCC.

^{4/} Id.

For example, in the late 1980's TMCT wired a multi-unit condominium complex, including common areas and individual residences, at a substantial investment, pursuant to the terms of its franchise, which required universal service to the entire community. As soon as the complex was completed, and all wiring installed, the property owner entered into an exclusive agreement with a SMATV operator who enticed the property owner with a percentage of its receipts. The SMATV operator was not required to pay any franchise fees or perform any other obligations to the community as a franchised operator would have been, since it was deemed to be a "private cable" operator. The SMATV operator connected into TMCT's wiring, over TMCT's objections, and proceeded to threaten TMCT with tortious interference with contractual relations if TMCT tried to restore its services in the complex.

After approximately two years and numerous complaints about poor service, the property owner all but begged TMCT to restore service. In addition, the franchising authority, after having received similar complaints, chose to enforce its universal service requirement against TMCT. TMCT was left with the option of either being sued by the SMATV operator or forced into hearings on the issue of franchise compliance. To avoid protracted litigation, TMCT was able to negotiate a buyout of the SMATV operator, who in essence successfully "greenmailed" TMCT, causing an increased cost to TMCT in providing services to the complex.

We wish we could say that this was an isolated experience, but it is not, given the business opportunities that some competing video providers see in "piggy-backing" on another's investment. For instance, mortgage foreclosures on MDU complexes often result

in loss of use of internal wiring to competitive providers who actively pursue such opportunities. In one of TMCT's markets alone, this has already amounted to a multi-million dollar asset loss.

The FCC should therefore clearly indicate that an MDU property owner is not the type of "subscriber" to which the 1992 Cable Act's home wiring provisions apply. To do otherwise would encourage an MDU property owner to confiscate a cable operator's MDU wiring.

If, however, the FCC does decide to include MDUs in this rulemaking, it should do so on a prospective basis only. Any new rules should apply only to developments that are wired for cable television service after the adoption of such rules.

2. The FCC Should Not Set The Price Or Terms For Acquisition Of Home Wiring By Cable Customers

Once the FCC has appropriately limited the right to acquire home wiring it should not specify detailed procedures, other than ministerial or administrative, for the acquisition of home wiring. The FCC should simply state that the cable operator should, on a system by system basis, create procedures for disposition of inside wiring that shall not unnecessarily disrupt the customer's premises.

Nothing in the legislative history appears to encourage or require the FCC to become the arbiter of the price for acquisition of wiring by cable customers. There is no evidence before the Commission of any abuses by cable operators in this area. Given the number of

complex rate setting procedures the FCC is already engaged in, and will be engaged in, under the 1992 Act, the Commission should not unnecessarily move into yet another such area. In addition, the issue of just compensation for property appropriation is traditionally, and legally, one for the courts to administer.

The Commission should allow flexibility in the contractual relationship between operator and subscriber. Cable operators deal with this issue on a case by case, company by company basis. Where the operator has retained the ownership interest in the wiring, this is normally evidenced by a statement to that effect in a written contract. The customer's right to acquire wiring is normally dependent on the customer justly compensating the cable system owner. If it chooses to enter this area the FCC should merely state that the parties should negotiate in good faith, and that the FCC does not intend to adjudicate disputes over charges for inside wiring.

3. If The FCC Does Administer The Price Paid by Customers For Inside Wiring Acquisition That Price Should Be Based On Going Concern Value.

If the FCC does become involved in this area, the compensation paid by a customer to acquire inside wiring would properly be based on a going concern value --- the value of the use of that wire in an ongoing business. If a wireless or private cable operator misappropriated the cable operators's internal wiring in a MDU, it would be misappropriating a business, and not just the labor and materials that went into wiring the complex. Presumably even if an individual customer wished to acquire the wire it would be

for use by an alternative video delivery system. This is not the case when a customer acquires internal telephone wiring because the telephone company will continue to serve the premises. Given the lost opportunity cost by the cable operator who originally installed the wire but no longer is allowed to serve the premises, it would be patently unfair to establish rules that reduce the value of the wiring to mere salvage value. Much more than wiring is appropriated from the cable company, and therefore the cable company should be compensated accordingly.

Further, if a homeowner's association or other entity that controls all individual choices of a cable operator in a single family development totally changes the video delivery service to subscribers, without allowing the existing operator to continue to compete in the development, the compensation to be paid by individual homeowners in that development for the acquisition of individual home wiring should also allow recapture of some component of the cost of the common wiring as well as the ongoing business value of the system throughout the planned unit development.

4. The FCC Should Recognize Legitimate Reasons For An Operator's Continuing Control Over Cable Wiring After Disconnection.

It is highly unlikely that a cable operator would attempt to abruptly rip out its wires or otherwise deal with home wiring so as to antagonize the customer. Good business practices dictate that despite the current disconnection by the customer, the company would like to ultimately convince that customer to return. One of the only situations in which a

cable operator would be likely to take out its wiring would be where threatened by misappropriation by a competitor, as in the SMATV example discussed above.

The operator also may wish to take out inside wiring to avoid the potential harm to be caused by signal leakage if the wire remained inside the home but was not adequately maintained. The fear of most operators is that if the FCC's Field Operations Bureau discovered signal leakage in an area caused by a wire left behind by a cable operator and now connected to an alternative system, the FCC may choose to shut down all systems in the area until the precise source of the leakage is found and corrected. Meanwhile, the cable operator who no longer has control over the wiring may be required to shut down all or part of its system for several hours or days, to the detriment of its customers and goodwill. Another reason an operator may want to remove the home wiring is to prevent a customer from overriding any traps and using the hookups illegally to obtain cable service, even though he/she claims to have discontinued service.

Conclusion

The FCC should make clear that a cable operator has the right to assert ownership of home wiring at the time of contracting with the customer, whether or not it chooses to assert that right. The Commission should also make clear that when a subscriber terminates and the cable operator has asserted its property interest in the wiring the cable operator is entitled to just compensation if the customer wishes to acquire the wiring.

The FCC can fairly require a cable company to have a written policy as to acquisition of cable home wiring upon termination of service. This rule appears to be adequate to meet the rather modest goals of this provision of the 1992 Cable Act. Through giving a subscriber the option to acquire the wiring, the cable operator can set forth the rights and responsibilities of each party towards inside wiring. Those operators who so choose may ask the customer to state at the outset of the contractual relationship if they wish to own the wire. The price for the wiring could be set at that time. Other operators may not wish to request such a decision at the outset of the customer relationship. Regardless, the rules should allow the operator to make that decision, for the many reasons specified above, while requiring the operator to disclose to the subscriber the options and procedures to be followed in the event a subscriber wishes to acquire such wiring, as well as the responsibilities for signal leakage and the costs such subscriber may incur after acquisition (such as on-going maintenance and repair).

The FCC should take as its watchword, as it enters this arena, to "first, do no harm." The relationship of cable company and cable customers to home wiring is governed by a complex of issues, from taxation to theft of service, from signal leakage to just compensation. A careful balancing of interests is called for that (1) recognizes the valid business interests of cable operators, who make substantial investments in their plant in order to provide quality and distinctive services to their customers, and who wish to continue to exercise control over it for legitimate purposes and (2) at the same time guards against

disincenting operators from continuing to upgrade and reinvest in their plant to the benefit of their subscribers.

Respectfully submitted,

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